

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Breeanne Buckley Peni, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

DAILY HARVEST, INC., SECOND BITE
FOODS, INC. d/b/a “STONE GATE FOODS”,
SMIRK’S LTD., AND MOLINOS ASOCIADOS
SAC,

Defendants.

Civil Action No.
22-cv-05443
Honorable Denise Cote

**PLAINTIFF’S UNOPPOSED MOTION TO PRELIMINARILY APPROVE CLASS
ACTION SETTLEMENT, APPOINT CLASS COUNSEL, APPROVE PROPOSED
CLASS NOTICE, AND SCHEDULE A FINAL APPROVAL HEARING**

PLEASE TAKE NOTICE THAT, upon the Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox, dated September 20, 2024, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Plaintiff Breeanne Buckley Peni will move this Court at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, before the Honorable Denise Cote, United States District Judge, for an Order under Federal Rule of Civil Procedure 23 to:

1. Grant preliminary approval of the proposed Class Action Settlement in the amount of Seven Million, Six Hundred and Seventy-One Thousand Dollars (\$7,671,000.00) with the Settling Defendants Smirk’s Ltd. and Molinos Asociados SAC, on behalf of the Settlement Class Members according to the terms of the parties’ Settlement Agreement;

2. Have the proposed Third Amended Class Action Complaint serve as the operative complaint for the settlement of all litigation and claims against the Settling Defendants;
3. Certify, for settlement purposes only, the Rule 23(b)(3) Class which is defined as “All persons in the United States (including its territories) who purchased, received, or consumed French Lentil + Leek Crumbles (“the Product” or “the Crumbles”) and directly suffered personal injuries caused by the consumption of the Crumbles, and all persons in the United States (including its territories) who suffered consequential monetary damages arising from or related to another person’s personal injuries arising from consumption of the Crumbles.”
4. Approve the form, substance, and distribution of the proposed Form of class notices (“the Class Notice”);
5. Approve the proposed Claim Form and Allocation Matrix;
6. Preliminarily approve the manner of distribution of the Settlement Fund;
7. Appoint Edgar Gentle of Gentle Turner & Benson, LLC as the Settlement Administrator for purposes of administering the Notice and Settlement Program;
8. Appoint Plaintiff Breeanne Buckley Peni as class representative;
9. Appoint Plaintiff’s Counsel as attorneys for the class (“Class Counsel”);
10. Set deadlines and procedures for persons who fall within the class definition to exclude themselves or object to the proposed Settlement;
11. Set a date for the Final Approval Hearing to determine whether the proposed Settlement should be granted final approval; and
12. Stay all proceedings in this action with respect to the Settling Parties, other than

those necessary to administer and evaluate the proposed Settlement.

A proposed Order to grant preliminary approval of the Settlement is attached to the accompanying Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox in support of the motion.

Oral argument is requested to the extent desired by the Court.

Dated: September 20, 2024

Respectfully submitted,

/s/ William D. Marler

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